



**MEMORANDUM TO:** Mayor and City Council

**VIA:** David B. Humpton, City Manager 

**FROM:** Cathy G. Borten, City Attorney 

**DATE:** October 12, 2006

**SUBJECT:** Draft Anti-Solicitation Ordinance

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Pursuant to direction received at the October 3, 2006 Mayor and Council meeting, staff has begun working on a draft of a proposed anti-solicitation ordinance that would be enforceable once a formal employment site for day workers is established. Attached please find a first draft of the proposed ordinance.

Please note that staff considers this an initial draft, that is intended to provide the Council with an idea of the direction we are headed. We are continuing to research legal issues as well as ordinances adopted and/or challenged in other jurisdictions throughout the country in order to develop an ordinance that is in the best interests of the City.

We expect the final draft to be ready for introduction at the November 6, 2006 Mayor and Council meeting. Any questions or comments prior to that time are certainly welcome. Thank you.

Ordinance No. \_\_\_\_\_

AN ORDINANCE TO REPEAL AND REENACT WITH AMENDMENTS  
CHAPTER 15 OF THE CITY CODE  
ENTITLED "OFFENSES - MISCELLANEOUS," SECTION 15-4, ENTITLED  
"LOITERING," SO AS TO CLARIFY EXISTING LANGUAGE WITH REGARD TO  
PROHIBITED CONDUCT, AND SECTION 15-9, ENTITLED "SOLICITATION IN  
ROADWAYS," AND TO CREATE NEW SECTION 15-9.1, ENTITLED "VEHICLE  
SOLICITATION," SO AS TO DISTINGUISH THE APPLICABILITY OF THE  
CITY'S PROHIBITION ON SOLICITATION SPECIFIC TO THIS CHAPTER

BE IT ORDAINED, by the Mayor and City Council of the City of  
Gaithersburg, in public meeting assembled, that Chapter 15 of the City Code, is  
hereby repealed and reenacted with amendments to read as follows:

**Chapter 15**

**OFFENSES – MISCELLANEOUS**

\* \* \* \* \*

**Sec. 15-4 Loitering.**

(a) \* \* \* \*

(b) *Prohibited conduct.*

(1) \* \* \* \*

(2) \* \* \* \*

(3) It shall be unlawful for any person to ~~loiter~~ remain without lawful business within  
one hundred (100) feet of any exterior portion of a business establishment selling  
alcoholic beverages for off-premises consumption, and to fail to obey the direction of a  
uniformed police officer or upon identification of a properly identified police officer not  
in uniform, to move on, where not to obey such direction either endangers the public  
peace or inhibits unimpeded movement of pedestrians and customers along any public  
way.

\* \* \* \* \*

\* \* \* \* \*

## **Sec. 15-9 Solicitation in Roadways**

It shall be unlawful for any person to stop, stand, walk or otherwise enter the drive lanes of any public roadway or a median area separating the drive lanes of a public roadway for the purpose of soliciting donations, alms, subscriptions, ~~employment or other business~~ from the occupant of any motor vehicle.

### **Sec. 15-9.1 Vehicle Solicitation**

#### **(a) Definitions.**

1. Solicit/attempt to solicit: For purposes of this Chapter only, solicit or attempt to solicit shall be defined as and/or include the act of requesting or announcing by any means the availability for or the availability of employment; or any action which seeks to offer, contract for, purchase, sell, or procure employment. The following acts, when accomplished in the context of securing employment, indicate a solicitation: approach between or among individuals; departing the place of approach together; utilization of a vehicle in the approach or departure. Conduct as defined herein is deemed to be a solicitation, whether or not an actual employment relationship is created. Solicitation does not include any activity conducted within or in accordance with the procedures of a lawfully approved formal assembly site for day workers, or other lawfully approved employment center use, issued a use and occupancy permit.

2. Employment center: an established location, issued a use and occupancy permit, where employment opportunities are coordinated between persons seeking employment and persons seeking to hire persons for employment.

#### **(b) Prohibited Conduct**

1. It shall be unlawful for any person, while occupying as a pedestrian any portion of a public or private road, sidewalk, driveway, parking area, or alley, including drive lanes, medians and curbs, to solicit or attempt to solicit employment from any pedestrian who temporarily exits a vehicle or from any person occupying or traveling in a vehicle on a highway, sidewalk, driveway, parking area, or alley.

2. It shall be unlawful for any person occupying or traveling in a vehicle, or who temporarily exits a vehicle, to solicit or attempt to solicit employment from a person who is a pedestrian on a public or private road, sidewalk, driveway, parking area, or alley, including drive lanes, medians and curbs.

(c) Enforcement

Regardless of adopted or effective date, this Section 15-9.1 shall not be enforced until, and shall only be enforced for so long as, a formal employment center is in operation within the corporate limits of the City of Gaithersburg or in the immediate vicinity.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2006 by the City Council of Gaithersburg, Maryland.

\_\_\_\_\_  
SIDNEY A. KATZ, MAYOR and  
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this \_\_\_\_ day of \_\_\_\_\_, 2006. APPROVED by the Mayor of the City of Gaithersburg, this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Sidney A. Katz, Mayor

THIS IS TO CERTIFY that the foregoing ordinance as adopted by the City Council of Gaithersburg, in public meeting assembled, on the \_\_\_\_ day of \_\_\_\_\_, 2006, and that the same was approved/vetoed by the Mayor of the City of Gaithersburg on the \_\_\_\_ day of \_\_\_\_\_, 2006. This Ordinance will become effective on the \_\_\_\_ day of \_\_\_\_\_, 2006.

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David B. Humpton, City Manager

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| <b>Boldface</b>              | <i>Heading or defined term.</i>                            |
| <u>Underlining</u>           | <i>Added to existing law by original bill.</i>             |
| [Single boldface brackets]   | <i>Deleted from existing law by original bill.</i>         |
| <u>Double underlining</u>    | <i>Added by Amendment.</i>                                 |
| [[Double boldface brackets]] | <i>Deleted from existing law or the bill by amendment.</i> |
| * * *                        | <i>Existing law unaffected by bill.</i>                    |